Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979
No. 79-1936

ANTONIO MARENO, JR., A MINOR OF 16 YEARS OF AGE BY HIS MOTHER AND NEXT FRIEND, KATHLENE C. MARENO,

Petitioner,

VS.

JAMES W. WALKER, INDIVIDUALLY AND AS PRINCIPAL OF LAKELAND SENIOR HIGH SCHOOL, SHRUB OAK, NEW YORK, AND ROBERT F. WILLIS, INDIVIDUALLY AND AS A SUBSTITUTE HOMEROOM TEACHER IN LAKELAND SENIOR HIGH SCHOOL, SHRUB OAK, NEW YORK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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TABLE OF CONTENTS

Question Presented. 1

Statement of the Case. 2-4

ARGUMENT

The Decisions Below Were Clearly Correct, and There is no Ground Whatsoever for the Granting of Certiorari. 5

The Judgment Below Was in Complete Accord with the Decisions of this Court. 5

Conclusion. 9

TABLE OF AUTHORITIES

Cases:

Adickes v. Kress & Co., 398 U.S. 144 (1970) 7,8

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942) 6

Epperson v. Arkansas, 393 U.S. 97, 104 (1968) 5,6

Fenton v. Stear, 423 F. Supp 767 (W.D. Pa. 1976) 6,7

Healy v. James, 408 U.S. 169 8

Thomas v. Board of Ed., Granville Cent. Sch. Dist., 607 F.2d 1043 (2nd Cir., 1979), cert. den., 48 L.W. 3536 (2/19/80) 8

Thonen v. Jenkins, 491 F.2d 722 (4th Cir., 1973) 8

Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 509 (1969) 8

Wood v. Strickland, 420 U.S. 308, 326 (1975) 5

Statutes:

42 U.S.C. §1983 1,2

Education Law of the State of New York 3

IN THE SUPREME COURT
OF THE UNITED STATES
October Term, 1979

ANTONIO MARENO, Jr., a minor 16 years of age, by his mother and next friend, Kathlene C. Mareno,

Petitioner,

vs.

JAMES M. WALKER, individually and as Principal of Lakeland Senior High School, Shrub Oak, New York, and ROBERT F. WILLIS, individually and as a Substitute Homeroom Teacher in Lakeland Senior High School, Shrub Oak, New York,

Respondents.

QUESTION PRESENTED

The sole question on this appeal is:

Whether the suspension of a second year high school student from class for one day, pursuant to the express regulations of the Board of Education of the school and the New York Education Law, for calling his teacher a "prick" on school premises "rose to the level of a violation of a specific constitutional guarantee," so as to create a cause of action under 42 U.S.C.

§1983.

The petitioner's "Questions Presented" are spurious and have no relation to the facts or the decisions below.

STATEMENT OF THE CASE

The judgment sought to be reviewed affirmed a summary judgment of the United States District Court for the Southern District of New York against the petitioner, a high school sophomore, in an action brought by him against his principal and homeroom teacher, purportedly pursuant to 42 U.S.C. §1983. The action was based upon a one day suspension of the petitioner from class, for the admitted use of profane and abusive language on the school's premises.

Petitioner arrived late at his classroom on the morning of January 5, 1979, and the teacher, Willis, directed him to obtain a late pass from the Dean's office - as, to petitioner's knowledge, was customarily required (3, 14, 20-21).* Willis abruptly closed the classroom door, and petitioner thereupon called Willis a "prick" (19, 48-49). Petitioner obtained a pass, returned, was admitted to the classroom, and was allowed to stay "to the end of the class" (18, 49). Willis then asked petitioner to

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* Unless otherwise indicated, numbers in parentheses refer to pages in the Joint Appendix.

go with him to the Dean's office (14-15, 18, 49).

The school principal, as alleged in petitioner's complaint, "imposed a one day suspension from school upon [petitioner]* * * for the use of 'foul language' in violation of the established school rule against the use of profanity or abusive language [student handbook]'" (4-5, 15). As is also conceded in the complaint (2-3), the pertinent sections of the Education Law of the State of New York empowered the school board "to establish rules and regulations concerning the order and discipline of the schools," and "to suspend students from school who are insubordinate or disorderly."

The school's notice of suspension, signed by both the Dean and the principal, was sent to petitioner's father, and it offered him "an informal conference" if he desired (34). Thereafter, the principal reminded petitioner's father that there had been two telephone conversations with him, in which the reason for the suspension has been explained (37). The principal also stated that, although the father had "requested no hearing at that time," the

principal "will be most happy to meet with [him] on Wednesday or Thursday morning of this week" (Id.).

Apparently, petitioner's father never accepted the invitation, and the principal wrote him that he (the principal) had completed his review and had "determined that our school procedures are in compliance with district policy and regulations issued by the State Commissioner of Education" (38). The principal, nevertheless, expressed a desire for "mutual cooperation in helping [petitioner] along a successful path" (Id.).

The district court, in granting defendant's motion for summary judgment, held:

> "mere disciplinary acts of a school administrator or faculty member are not matters for a federal court's review absent evidence of conduct which rises to the level of violation of specific constitutional guarantees." (50)

The Court of Appeals unanimously affirmed that judgment (Petition, Appendix C).

ARGUMENT

THE DECISIONS BELOW WERE CLEARLY CORRECT, AND THERE IS NO GROUND WHATSOEVER FOR THE GRANTING OF CERTIORARI

The Judgment Below Was In Complete Accord With The Decisions Of This Court

In the leading case of Wood v. Strickland, 420 U.S. 308, 326 (1975), this Court held:

> "It is not the role of the federal courts to set aside decisions of school administrators which the court may view as lacking a basis in wisdom or compassion. * * *
>
> " . .§1983 does not extend the right to relitigate in federal court evidentiary questions arising in school disciplinary proceedings or the proper construction of school regulations. The system of public education that has evolved in this Nation was not intended to be a vehicle for federal court correction of errors in the exercise of that discretion which do not rise to the level of violations of specific constitutional guarantees."

In Epperson v. Arkansas, 393 U.S. 97, 104 (1968), the Court similarly held:

> "Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate

basic constitutional values."

It is actually unnecessary to invoke the doctrine of Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), upon which the petition extensively, but irrelevantly, discourses (pp. 12-16), but that decision does afford additional support for the judgment below. It held:

> "the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words * * * are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality....." (pp. 571-72).

This principle is all the more applicable in the instant case, where the profane insult was uttered by a high school student to his teacher on school premises, and his sole grievance is that he was suspended from class for the minimum period of one day, in accordance with established school regulations.

Fenton v. Stear, 423 F. Supp 767 (W.D. Pa. 1976), also discussed in the petition (p. 12 et seq.), is precisely in point, and